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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/657,154	09/07/2000	Shun Nakamura	K6510.0055/P055	9966

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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street, NW
Washington, DC 20037

EXAMINER	
NGUYEN, KIM T	
ART UNIT	PAPER NUMBER
3713	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/657,154	NAKAMURA ET AL.	
	Examiner	Art Unit	
	Kim Nguyen	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *8-16,18-21,38-40,44-49 and 52-56* is/are pending in the application.

4a) Of the above claim(s) *8-16,18-21,38-40,52 and 56* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *44-49 and 53-55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Examiner acknowledges receipt of amendment on 7/8/05. In response to the restriction requirement, applicant has elected species 3, claims 44-49 for examination purposes. Due to newly added claims 52-56, a restriction requirement is established as following:

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1: Figs. 8A-8C, claims 8-16, 18-19, 21 and 38-40, drawn to providing moving command marks.

Species 2: Fig. 16, claim 20, drawn to a specific pose as an operation command.

Species 3: Fig. 12, claims 44-49 and 53-55, drawn to providing commands in accordance with a rhythm of music.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 52 and 56 are generic of species 1 and 2, and species 3 has no generic claim.

2. Since applicant has elected species 3 claims 44-49 for examination. Accordingly, claims 44-49 and 53-55 are examined in this office action, and claims 8-16, 18-21, 38-40, 52 and 56 are withdrawn from consideration as being directed to a non-elected ~~invention~~ species.

Claim Objections

3. Claims 44-49 and 53-56 are objected to because of the following informalities:

a) In claims 44-49 and 53-55, line 1, the preamble "game player motion" should be corrected to "a motion of a game player".

b) In claims 44-45, line 9; claim 46, line 10; claim 53, line 7; claim 54, line 7; and claim 58, line 8, the claimed limitation "the display (game) screen" should be corrected to "a display (game) screen".

c) In claim 48, line 3, a comma "," should be added at the end of line 3.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject

matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 44-49 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps et al (US 5,741,182) in view of Fenner et al (US 5,009,501) and Suzuki et al (US 6,227,968).

As per claim 44, Lipps discloses a game apparatus comprising an operation device 4 (Fig. 1); a position detector detecting light from the bat (col. 1, lines 45-47 and col. 2, lines 56-58) at a plurality of positions (Fig. 2; ref 47); and a display unit 3 (Fig. 1) for issuing a prescribed operation to a game player and determining correctness of player device operation (col. 3, lines 5-12). Lipps does not disclose capturing successive spatial positions of an operation device to create a trace of the operation device movements. Fenner discloses a remotely controllable position indicator system that uses light emitters and detectors to determine movement and orientation of objects (Abstract). Fenner discloses the system as a remotely hand held implement (col. 1, lines 22-23) with transmitter and receiver pairs to form a number of planes used to determine 3-D spatial reference with respect to the hand held implements (col. 1, lines 59-67 and col. 2, lines 37-48). Thus Fenner discloses that successive spatial positions are used to detect the movement of the operation device. Fenner envisions the system to be used for a plurality of applications such as detecting relative locations of players in a game and for

interacting with images on a video screen (col. 1, lines 1-20). One would be motivated to use the 3-D spatial detection system taught by Fenner because such a system can increase the accuracy of the position detection system thus providing a player with better simulation and analysis of player performance (Lipps, col. 1, lines 25-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to use the 3-D spatial detection system taught by Fenner so that an increase in detection accuracy can provide better game simulation and analysis for a player. Further, Lipps in view of Fenner does not disclose a command mark with a command of a specific operation. However, Suzuki teaches a game machine providing a player with a plurality command marks blown out from a prescribe position, with each having different commands associated with each other (Fig. 1-9). Suzuki further teaches that musical rhythm is integrated with the game command marks, where the commands indicate a position a player needs to take (col. 16, line 9 through col. 17, line 8). Lipps in view of Fenner and Suzuki are related as game machines capturing moves of a user, wherein game computer judges move correctness. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps in view of Fenner and include a specific command operation with the command mark taught by Suzuki

so that a player attempting to associate correct moves with specific pitches can be told what type of pitches was being displayed.

As per claim 45-49 and 53-55, refer to discussion in claim 44 above.

Response to Arguments

6. Applicant's election with traverse of species 3 in the reply filed on 7/8/05 is acknowledged. The traversal is on the ground(s) that no undue burden would be involved in examining all the claims together because examination of the claims of species 3 will necessarily include a search and examination of subject matter included in the species 1 and 2 claims. This is not found persuasive because species 1 drawn to providing moving command marks and species 2 drawn to providing a pose command, whereas species 3 drawn to providing commands in accordance with a rhythm of music. The three species require different search, serious burden of the search and examination would be imposed to the examiner should all the species were examined.

The requirement is still deemed proper and is therefore made FINAL.

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any response to this final action should be mailed to:

Box AF:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Or faxed to:

(703) 872-9306, (for formal communications; please mark "EXPEDITED PROCEDURE")

Hand-delivered responses should be brought to Crystal Plaza II, Arlington, VA Second Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is (571) 272-4441. The examiner can normally be reached on Monday-Thursday from 8:3OAM to 5:OOPM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai, can be reached on (571) 272-7147. The central official fax number is (703) 872-9306.

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Date: September 12, 2005

Kim Nguyen
Primary Examiner
Art Unit 3713